

VIKING RESOURCES CORP.

IBLA 85-371

Decided May 26, 1987

Appeal from decisions of the New Mexico State Office, Bureau of Land Management, rejecting high bids for competitive oil and gas leases, NM-51850 (Okla.), NM-51851 (Okla.) and NM-51854 (Okla.).

Affirmed.

1. Oil and Gas Leases: Competitive Leases -- Oil and Gas Leases:
Discretion to Lease

Where, in the adjudication of an appeal from a decision of BLM rejecting a high bid for a competitive oil and gas lease as inadequate, BLM establishes a rational basis for its determination, the burden of proof shifts to an appellant to establish that the bid submitted represents fair market value.

APPEARANCES: Kenneth A. Milliard, Vice President, Viking Resources Corp., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Viking Resources Corporation has appealed from decisions of the New Mexico State Office, Bureau of Land Management (BLM), dated January 9, 1985, rejecting its high bids for competitive oil and gas leases, NM-51850 (Okla.), NM-51851 (Okla.), and NM-51854 (Okla.).

Appellant submitted the high bids for parcels 25, 26 and 29 situated in Ellis and Woods Counties, Oklahoma, at a December 22, 1981, competitive oil and gas lease sale, with per acre bids, respectively, of \$ 5, \$ 10 and \$ 5. Appellant was the only bidder for these parcels. By decisions dated February 18 and 23, 1982, BLM rejected appellant's bids because, "[b]ased on [a] pre-sale evaluation" of the parcels, the bids were deemed to be "inadequate." Appellant appealed those BLM decisions. In Viking Resources Corp., 77 IBLA 57 (1983), the Board set aside the BLM decisions because BLM had failed to disclose its pre-sale evaluations of the parcels, including the valuations and their method of calculation. The Board remanded the case to BLM for a "readjudication" of appellant's bids. Id. at 60.

By memoranda dated November 14, 1984, the Chief, Southwest Region Evaluation Team (SRET), BLM, recommended rejection of appellant's bids because they were "substantially beneath" BLM's estimate of the per acre dollar values of the parcels of land, i.e., \$ 140 (parcel 25), \$ 50 (parcel 26) and \$ 200 (parcel 29). The Chief, SRET, explained that the dollar values had been determined using the "discounted cash flow analysis supported by comparable sales" 1/ in the case of parcels 25 and 26 and the "comparable sales approach" 2/ in the case of parcel 29. The record also contains copies of the "original" tract evaluations prepared by the U.S. Geological Survey (Survey). These evaluations indicate that the "immediate area" of each of the three parcels has been shown to have "proven economic production" from certain formations and that well data from "surrounding sections" reveal that the hydrocarbon traps in these formations are "primarily stratigraphic rather than structural." In the case of parcels 25 and 26, a discounted cash flow analysis was conducted and the resulting value was "risk weighted" depending upon the success rate for wells in each area. In the case of parcel 29, Survey compared three sales with per acre bids ranging from \$ 150 to \$ 375.

In the January 1985 decisions, BLM again rejected appellant's bids, relying on the recommendations contained in the November 14, 1984, SRET memoranda. Although the record shows that copies of the memoranda were provided to appellant, it also shows that the three tract evaluations with supporting documentation were placed in the case files after the decisions were issued and after appellant had filed its notice of appeal and statement of reasons. Attached to each tract evaluation is a routing and transmittal slip, dated

1/ This analysis was described as making use of estimated oil and gas reserves:

"The reserves used are based on the oil and gas reserves for a well in the area which is an analogue for the spacing unit within which the tract being appraised is located. A forecast of future oil and gas production is prepared on an annual basis for each year in the life of the spacing unit. Oil and gas prices are estimated and applied to the estimated future production stream. Future operating costs are estimated, including inflation. From the future net revenue, the operating costs and taxes are deducted to obtain future net funds from operations for each remaining year during the life of the hypothetical production. For each year in which capital costs are to be expended, or in the case of salvage value recovered, these are either added or subtracted from the annual figures. This column is then discounted to present worth by applying the appropriate discount factor.

"Generally, discount factors based on prime rate, plus one to two percent, are used for appraisal purposes. The resulting value is called the present worth of future net cash realization. It is further discounted by using a market factor to obtain an estimate of fair market value. This market factor varies and the engineer's knowledge of market sales and risk is utilized to determine the fair market value factor." (Emphasis added.)

2/ This approach was described as applying "market data or prices obtained from actual transactions to the appraised property. Most credible are those recent sales which are of (geologically) similar properties in the vicinity of the appraised property."

February 8, 1985, from the SRET, which states that the evaluations are the "original" ones prepared by Survey and that they had been reviewed and are still valid for the dates of the sales. Since copies of this documentation were not provided to appellant, the Board, by order of June 17, 1986, returned the case file to BLM with the direction to provide appellant with a copy of the Survey documents by certified mail. After appellant received this information on June 26, 1986, it filed an additional response supplementing its statement of reasons.

In its statement of reasons, appellant contends that BLM has not provided "a sufficient factual basis for the conclusion that the bids are inadequate." Appellant objects that BLM has not clearly explained the "discounted cash flow analysis or engineering appraisal method." Appellant also argues that since the Mineral Leasing Act, the Code of Federal Regulations and the Notice of Sale do not clearly define on what basis "any and all bids" may be rejected, BLM's rejection is an arbitrary action.

As to the tract evaluations, appellant argues in its supplemental response that these evaluations, dated December 21, 1981, are too old to be relied upon and should not be given any consideration as current evidence. Appellant maintains BLM should not be allowed to submit such evidence 4-1/2 years after the competitive sale because this is not fair and equitable to all parties involved. Moreover, appellant disagrees with the actual tract evaluations, citing dry holes located near the sale tracts which it alleges drastically reduce their value. It also refers to the "precipitous drop" in oil prices along with the current climate of the industry that would probably reduce the evaluations.

[1] Based on our review of the record, we conclude that the information submitted by BLM in support of its estimate of value is sufficient, under a number of recent Board decisions, to establish the prima facie validity of its estimate and shift to appellant the burden of showing that its bid represented fair market value. See, e.g., Harris-Headrick, 95 IBLA 124 (1987); Green v. BLM, 93 IBLA 237 (1986); Viking Resources Corp., 80 IBLA 245 (1984). Since our April 30, 1984, decision in Viking Resources, we have consistently pointed out that ultimate success on an appeal from a high bid rejection can only be achieved where an appellant shows, by a preponderance of the evidence, that its bid represents fair market value. As we noted in Harris-Headrick, supra, "[m]erely establishing that the Government's presale estimate is too high cannot justify issuance of a lease to any appellant absent a showing that its bid does, indeed, represent fair market value for the parcel in question, because it is possible that even though the Government's estimate may be too high, the appellant's bid could, at the same time, be too low." Thus, while BLM must, as an initial matter, show the basis for its determination that the bid was too low, an appellant must ultimately carry the burden of establishing the acceptability of its bid. Merely establishing error in the Government's presale estimate will not suffice. As we noted in our decision in Southern Union Exploration Co., 97 IBLA 275 (1987):

This approach merely replicates the traditional view of the Board that, where challenged on appeal, decisions of BLM officials are presumed to be valid and it is an appellant's burden to show that they are erroneous. See, e.g., In re Pacific Coast Molybdenum Co., 75 IBLA 16, 22, 90 I.D. 352, 356 (1983).

Where BLM has rejected a high bid, it has necessarily found that the high bid did not represent fair market value. An appellant can only succeed on an appeal if it can show that its bid does represent fair market value. Thus, the real focus of adjudication must always be on the acceptability of the high bid tendered and not on whether BLM's estimate of value is correct.

Id. at 278 n.2.

Appellant has submitted no evidence which would support a conclusion that its bids, which had previously been described as "approach[ing] the demarcation line between good faith and spurious" (Viking Resources Corp., 77 IBLA at 61 (concurring opinion)), represented fair market value at the time of the lease sale. Having failed to carry this ultimate burden, its appeal is properly rejected.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Gail M. Frazier
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

James L. Burski
Administrative Judge.